

Wendy Wiles, Administrator
Environmental Solutions Division
Department of Environmental Quality
Agency Headquarters
811 SW Sixth Avenue
Portland, OR 97204-5696

RE: Waiver Request of the 50%/50% Spending Requirement of 319(h) Funding

Dear Ms. Wiles:

The purpose of this letter is to respond to your September 20, 2016, request for a waiver to deviate from the Clean Water Act Section 319(h) National Program Guidance which requires states to use at least 50% of the Section 319(h) funds to implement [non-point source \(NPS\)](#) watershed projects. The waiver request, for FY 2015 and FY 2016, cites difficulties in meeting this requirement because [EPA withheld approximately 1/3 of the State's 319 awards](#) ~~were penalized~~ when NOAA and EPA determined the Oregon Coastal Non-point Pollution Control Program (CNPCP) was not approvable under the Coastal Zone Act Reauthorization Amendments (CZARA).

In each of those years [Oregon Department of Environmental Quality \(DEQ\)](#) elected ~~to reduce funding to take the penalty from the portion of the award intended for non-point source watershed implementation~~ projects because the "non-project" implementation funds supported the Performance Partnership Agreement (PPA) ~~to which funded~~ staff who ~~are connected to and~~ implement the State's [NPS Non-point Source Management Program Plan](#).

EPA fully appreciates the budgeting difficulties the [Oregon Department of Environmental Quality \(DEQ\)](#) has experienced in the last two 319(h) funding cycles because of the CNPCP decision. EPA also recognizes the importance of funding staff who implement the State's [NPS non-point source Management Program Plan](#) ~~program~~ for without them, the program would not get implemented. While EPA approves DEQ's waiver request, I offer the following regarding your request, and more broadly, on key points regarding the implementation of DEQ's 319 program.

In your waiver request you indicate that the ~~reduced 319 funding arising penalties~~ from the CNPCP decision were the cause of the State not being able to meet the "50/50" spending requirement in the 319(h) National Program Guidance, and that DEQ is committed to work with EPA, NOAA and other State agencies to address the CNPCP gaps ~~to receive full approval for its CNPCP and the entire 319 award~~ ~~eliminate the 319 penalty~~. EPA sincerely appreciates DEQ's commitment to work together to address the CZARA gaps ~~and receive full approval to eliminate the penalties~~; however, based on the figures in your letter, it appears that the "50/50" spending requirement would not have been met in either year even ~~if Oregon received the full 319 award before applying the penalties~~. DEQ's spending ratio of "PPA" to "implementation projects" was 94.10%/5.9% in FY 2015, and 76%/24% in FY 2016. This spending ratio is not inconsistent with years prior to FY 2015 when DEQ used the majority of its 319 award to support the PPA to fund staff who work on non-point source program implementation. ~~Use~~ [Use](#) until DEQ changes how it divides its 319 award between the PPA and project implementation, it is highly unlikely that DEQ will meet the "50/50" spending requirement.

As you know, EPA does provide in its 319 guidelines, a "leveraged exemption" from the 50/50 spending requirement for those states that devote and leverage significant (beyond the 40% match) non-federal

resources in implementing their NPS plan. In your letter you identified a number of activities the state staff are involved with which directly support non-point source implementation projects that might count towards meeting the 50/50 spending requirement. EPA is aware of many of these activities since members of my staff ~~participate~~are involved with your staff on some of the projects. EPA is also keenly aware of the millions of dollars the Oregon Watershed Enhancement Board spends annually to support restoration projects that address non-point sources of pollution. As such, EPA completely supports DEQ's exploration of a "leveraged exemption" to address the "50/50" spending requirement. Please note, that there are a variety of conditions that DEQ must meet for EPA to approve a "leveraged exemption" so if DEQ pursues this path, it is critical that DEQ begins the process early, a timely exploration process takes place. EPA would like to see a draft of a State proposed "leveraged exemption" plan by 3/17.

At the programmatic level, EPA recognizes that elements of DEQ's 319 program have been hampered by a variety of issues including reduced 319 funding ~~the CZARA penalties~~ and vacancies in key 319 staff positions during in FY 2016. These challenges contributed to delays in DEQ's submittal of its Intended Use Plan, the Annual NPS Nonpoint Source Pollution Program Report and ultimately its application for the FY 2016 funding. ~~EPA is hopeful that the CZARA issues will be addressed in 2017,~~ and that DEQ will be able to fill the program vacancies, however, nothing is certain. EPA, therefore, strongly encourages DEQ to take a very proactive approach in establishing a program calendar that defines milestones and commitments needed to achieve timely submittals of critical 319 program products, including a timely exploration of a "leveraged exemption". My staff is committed to work with you and your staff to develop such a calendar before the end of December 2016.

Commented [CJ1]: This may be a misleading statement since even if all of the gaps are addressed, it will take 9 months or so to go through the public review process, address the comments and issue a final decision. Consider deleting.

In summary, EPA approves DEQ's waiver request of the "50/50" 319 spending requirement for FY 2015 and FY 2016 based on the State's need to support the PPA, which funds staff who implement non-point source programs, and because of the impacts of substantially reduced 319 funding as a result of an adverse from the CZARA decision ~~penalties~~. EPA strongly encourages DEQ to explore a "leveraged exemption" for future years when the DEQ is not likely to meet this requirement. If you have questions or concerns regarding this letter, please feel free to call me at (206) 553-1855 or you can contact Alan Henning of my staff at (541) 687-7360. Thank you for your continued efforts to improve water quality and protect the State's waters from NPS non-point ~~sources~~ of pollution.

Sincerely,

Formatted: Indent: Left: 3"

Dan Opalski, Director
Office of Water and Watersheds